

**STATEMENT OF BOB FOOSE, EXECUTIVE DIRECTOR  
MAJOR LEAGUE SOCCER PLAYERS UNION**

**BEFORE THE HOUSE ENERGY AND COMMERCE SUBCOMMITTEE  
ON COMMERCE, TRADE AND CONSUMER PROTECTION**

**ON**

**H.R. 1862**

**THE DRUG FREE SPORTS ACT**

**MAY 18, 2005**

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Mr. Chairman and members of the Subcommittee:

My name is Bob Foose, and I am the Executive Director of the Major League Soccer Players Union (“MLS Players Union”), the labor organization representing players in Major League Soccer (“MLS”). The MLS Players Union appreciates the opportunity to appear before this Subcommittee and to express its views on H.R. 1862, the Drug Free Sports Act.

Our union is the newest in professional sports. Formed in April of 2003, we recently completed negotiations with MLS on the first collective bargaining agreement in the history of the league. Those negotiations were lengthy. Because we were bargaining a first agreement, we covered everything from direct deposit of paychecks to the first retirement plan ever to cover players in the league – and most everything in between.

Like all labor negotiations, at times ours were difficult and contentious. One subject on which it was easy for the players and management to agree,

however, was on the use of performance enhancing drugs. Our players are extremely proud of the fact that MLS is a league without performance enhancing drugs, and the players want to keep it that way.

It takes a tremendous amount of talent to play professional soccer. Major League Soccer players are among the fittest athletes in the world, and steroids and other performance enhancing drugs simply have no place in the game. As stated in our collectively bargained drug policy, “the use of performance enhancing substances violates the ethics, integrity and image” of professional soccer. We are also keenly aware that youth soccer is the most popular youth sport in the United States. Major League Soccer players take great pride in being role models for the millions of children who play soccer every day in our country.

Before I describe our collective bargaining agreement and drug policy, I would like to explain briefly how the world of soccer differs fundamentally from that of other sports, and how, as a result, MLS players are subject to testing for the use of performance enhancing substances on many levels. First, many members of our union are in the player pool for their respective National Teams. These are the teams that are currently representing their countries in competition to qualify for the 2006 World Cup. In addition, members of our union also compete for other National Teams in youth tournaments, such as the World Youth Championship this summer in the

Netherlands, for players under the age of 20, and the U-17 World Championship this fall in Peru, for players under the age of 17.

These National Teams, which are separate from MLS, compete in tournaments sanctioned by the world governing body for soccer, known as the Federation Internationale of Football Associations, or FIFA. In competing in FIFA tournaments and exhibition games, players are subject to random testing for the use of performance enhancing drugs, and are tested for the World Anti-Doping Agency (“WADA”) list of prohibited substances. Any player who tests positive is subject to significant discipline under the FIFA Disciplinary Code, including a minimum six-month suspension for a first-time offense. Many of the members of our union also have been, and will in the future be, members of the U.S. and other Olympic Teams. Members of those teams are subject to strict International Olympic Committee and WADA testing requirements.

MLS players, of course, are also subject to drug testing by MLS. This year is the tenth season of MLS, and the first one in which players in the league are covered by a collective bargaining agreement. Even before the negotiation of this agreement, MLS players had been subject to a stringent drug testing program, in which all players were randomly tested at least once per year, at any time during the year. Players were tested both for the use of performance enhancing drugs and recreational drugs of abuse.

After the union was organized, one of our first steps was to poll the players on their priorities for a first collective bargaining agreement. That poll included questions regarding whether players wanted to negotiate changes to the league's drug policy. The players, however, understood the need to continue a stringent drug policy, as we work with the league to grow the sport of soccer in the United States. In negotiations, therefore, while we fought hard over 18 months on terms such as an increased minimum salary, employer-paid health insurance and a pension plan for all players, the players accepted management's proposal to maintain a strict policy with respect to the use of performance enhancing substances.

The drug testing program adopted in our agreement is run by an independent outside entity, jointly approved by the union and the league. Testing includes: (a) random testing, in which players are tested at least once each year; (b) for-cause testing in which players may be tested when they exhibit behavior indicating the use of a prohibited substance; and (c) return to duty testing, following a failed drug test and/or completion of treatment for substance abuse. Players are tested both for performance enhancing and recreational drugs of abuse. Significantly, the drug testing program in MLS uses the WADA list of prohibited substances.

If a player tests positive for a performance enhancing substance, the Commissioner of MLS has the authority to impose discipline up to and

including the termination of that player's contract. Moreover, there is no confidentiality protection for a player who tests positive for a performance enhancing substance. Ours, therefore, is a strict policy, and is one of the most stringent in professional sports. As a union, we accepted such a policy because our players are clean, and they want to protect the integrity of the sport often referred to as "the beautiful game."

Thus, Major League Soccer has in place a strict drug policy that has helped keep the league free of the problems caused by the use of performance enhancing drugs. The players believe strongly in the power of the collective bargaining process. Indeed, our union is a prime example of that power. For the first several years of the league, the players were involved in a lawsuit against MLS in an effort to improve their economic well-being. That effort, however, proved unsuccessful. It was only by organizing a labor union and engaging in collective bargaining, that MLS players today for the first time have improved their terms and conditions of employment. Through collective bargaining, players have raised the minimum league salary, implemented the first retirement plan for players in league history, and provided for a neutral grievance and arbitration procedure in which disputes can be aired and resolved. And, the players and the league have agreed on a system that will continue to combat and prevent the use of performance enhancing drugs in soccer.

Collective bargaining works, and when it is allowed to work, labor and management can devise creative solutions to the problems and issues in their particular workplaces. Under the National Labor Relations Act, drug testing of current employees is a mandatory subject of bargaining, subject to good faith negotiation between the parties. As described, we have just negotiated a first agreement in which we covered all subjects, including drug testing. The result is that MLS has a strict policy that we think will keep performance enhancing substances out of the league. We are, however, opposed to governmental amendment of our agreement. For that reason, we oppose H.R. 1862 in its current form.

Leaving aside that philosophically we do not believe that Congress should override the provisions of collective bargaining agreements, I would like to comment briefly on the proposed bill.

The bill calls for a mandatory two-year suspension for any positive test, with no exceptions. Although our agreement allows for termination for a positive test, discretion is also given to impose lesser penalties. This discretion is consistent with WADA's anti-doping code, which allows less than a two-year suspension under certain circumstances, such as where the athlete bears no significant fault or negligence. We believe that a two-year ban for any positive test is too harsh, particularly when it does not allow for any mitigating factors.

Moreover, we do not believe that a one-size fits all penalty covering all sports is appropriate. The lengths of players' careers in professional sports differ greatly from sport to sport. Although soccer players' careers may not be as short as those of football players, they are shorter than those in other sports such as baseball. In many circumstances, a two-year ban can effectively end an MLS's player's career, and it certainly would have a greater impact than in other sports in which the length of a playing career is longer.

Similarly, the penalties imposed under H.R. 1862 for noncompliance would have dramatically different impacts on the various sports leagues covered by the bill. I think I can speak for both the union and the league when I say that we are striving for the day when a \$5,000,000 fine will have the same impact on MLS that it has on more wealthy leagues. However, the fact is that such a day has not yet arrived. As a union, we want MLS to prosper. It is simply not fair to impose a penalty on MLS that would have a much more significant impact than one imposed on other leagues.

Let me close by inviting all of you to an MLS game. The defending MLS Cup champions, D.C. United, play their home games within the shadow of the Capitol, at RFK stadium. When you go to the game, you will see talented, committed and amazingly fit athletes, who do not use performance enhancing drugs. Those athletes, now through their union, and working with



the league, have done a tremendous job of keeping performance enhancing drugs out of the game. The MLS Players Union is committed to continuing that effort.

On behalf of all MLS players, I thank you for the opportunity to testify today.

## **SUMMARY OF THE STATEMENT OF BOB FOOSE**

1. The MLS Players Union is the newest union in professional sports, and recently completed negotiations for the first collective bargaining agreement in the history of Major League Soccer ("MLS"). In those negotiations, both labor and management agreed that performance enhancing drugs have no place in the game.

2. In addition to being subject to drug testing by MLS, many MLS players are subject to drug testing through their participation in international competitions for their respective National Teams and Olympic Teams. Members of these teams are subject to drug testing for the World-Anti-Doping Agency's ("WADA") list of prohibited substances.

3. The drug testing program in MLS includes (a) random testing; (b) for-cause testing; and (c) return to duty testing. Moreover, players are tested for the WADA list of prohibited substances. In addition, the program is administered by an independent outside entity. If a player tests positive for the use of a performance enhancing drug, he is subject to discipline, up to and including termination.

4. The MLS Players Union agreed to a strict policy prohibiting the use of performance enhancing drugs because currently MLS does not have a performance enhancing drug problem, and the players want to keep it that way.

5. The MLS Players Union is opposed to H.R. 1862 because:

(a) The MLS Players Union addressed the issue successfully in collective bargaining, and is opposed to government amendment of its collective bargaining agreement;

(b) The mandatory two-year ban is too harsh. Although the policy in MLS includes discretion to terminate a player who tests positive, lesser discipline may be imposed. The MLS policy is consistent with WADA's code, which recognizes that mitigating circumstances may exist.

(c) A one-size fits all two-year ban is not fair. The length of players' careers varies between sports, and a two-year ban may effectively be a lifetime ban for many soccer players.

(d) The monetary penalties imposed do not take account of the very different finances of the leagues covered by the bill. It is simply not fair to impose a penalty on MLS that would have a much more significant impact than one imposed on other leagues.